

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11380 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GSRTC

Versus

MANIALAL DALPATRAM AGRAAVAT

Appearance:

1. Special Civil Application No. 11380 of 2000
MRS VASAVDATTA BHATT for Petitioner No. 1
RULE SERVED BY DS for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 28/11/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Vasavdatta Bhatt for
the petitioner. This Court has, by way of order dated

8.11.2000, issued rule returnable on 19th December, 2000 and meanwhile, interim relief in terms of para 7(B) was granted. The rule issued by this court has been served upon the respondent workman.

By way of this petition under Article 227 of the Constitution of India, the petitioner corporation has challenged the award made by the labour court, Rajkot in Reference No. 476 of 1989 dated 23.3.2000 wherein the labour court has directed the petitioner corporation to pay to the respondent workman an amount of back wages to the tune of 50 per cent for the period from 1.2.88 to 31.1.1989 within thirty days from the date of publication of the award.

During the course of hearing, it was submitted by the learned advocate Ms. Bhatt that the date of birth as recorded in the service book was correctly recorded on the basis of the school leaving certificate produced by the respondent workman himself. She further submitted that according to the administrative circular no. 878 dated 26th June, 1981, if there is any difficulty with the date of birth by the employee, then, he has to approach within three months before preparing of the service book of the concerned employee. She further submitted that in this case, the respondent has approached the authority after the period of about thirteen years and, therefore, such delay was fatal and no such request can be entertained and the corporation was right in rejecting the request of the respondent for change in birth date. According to her submission, the labour court has committed gross error in accepting such request of the respondent workman. She further submitted that the written statement was filed by the corporation challenging the averments made by the workman in his statement of claim. She also pointed out that the date of birth recorded in the service book of the workman was recorded on the basis of the date of birth mentioned by the workman in his application form as 18th January, 1930, on the basis of the school leaving certificate issued by the school concerned and according to the date of birth 18th January, 1930, the workman retired on 31st January, 1988 and he was rightly superannuated by the petitioner on the basis of the date of birth as recorded in his service record and in doing so, the corporation has not committed any illegality but the labour court has committed gross error in allowing the reference. In support of her submissions, she has placed reliance on the decision in the matter of UNION OF INDIA AND HARNAM SINGH reported in 1994-I-LLJ 318. According to her submission, in view of the delay on the part of the

workman in the matter before the Supreme Court in seeking alteration, as the alteration was sought 35 years after joining the service, request for alteration in the birth date was rejected by the apex court. She has submitted that in the case before hand also, there was inordinate delay and, therefore, reference ought to have been rejected on that ground alone. She has also submitted that the petitioner should be given an opportunity to consider the case of the respondent in view of the observations made by the labour court that the petitioner ought to have considered the genuineness of the documents submitted by the workman alongwith his request for alteration of his date of birth in his service record. Save and except these submissions, no other submissions were made by the learned advocate Ms. Bhatt on behalf of the petitioner.

I have considered the submissions made by Ms. Bhatt for the petitioner. I have also perused the award made by the labour court and documents on the record of this petition. From the perusal of the award in question, it appears that the statement of claim was filed by the workman at Exh. 4. As per the statement of claim Exh. 4 filed by the respondent workman before the labour court, as evident from the award in question, he was working with the petitioner corporation as a conductor since last seventeen years; lastly, he was being paid monthly wages of Rs.1697.15 ps. and the petitioner has relieved him from service on 31.8.1988 and before he was relieved, he had made representation before the petitioner corporation in respect of his date of birth. It was his case before the labour court, as per his statement of claim Exh.4 that his real birth date was not 18.1.1930 but 16.1.1931; document in that regard was produced but without verifying that, the workman was illegally retired from service. Before the labour court, written statement to the statement of claim was filed by the petitioner at Exh. 5 denying the averments made by the workman in the statement of claim Exh.4 and thereafter, on behalf of the corporation, vide Exh. 6, copy of the application form submitted by the workman as well as the school leaving certificate and the service book has been produced which were accepted vide Exh. 34 to Exh. 36. Vide Exh. 9, workman produced certain documents about the demand notice, application given by the workman before the petitioner for correcting his birth date, extract of the record of Kuvadva Gram Panchayat in respect of his date of birth which were exhibited as Exh. 10 to Exh. 13. Before the labour court, deposition of the workman was recorded at Exh. 22. Vide Exh. 22, on behalf of the workman, Kanjibhai

Gokalbhai, Principal of Kuvadva Gram Middle School was examined. Vide Exh. 27, witness no.2 Jitendra D. Belani, Principal of Jiyana Primary School was examined on behalf of the workman and vide purshis Exh. 28, it has been declared that the evidence of the workman was over. One witness Jashvantkumar Karia was examined on behalf of the petitioner at Exh. 30 and vide Exh. 37, petitioner filed its purshis for closure of its evidence. Vide list Exh. 31, the corporation produced GSO 430 and the circulars dated 26.6.81, 29.3.84 and 8.6.89 which were exhibited as Exh. 32 to 33 and thereafter, representatives of the parties argued before the labour court.

After considering the evidence on record, the labour court come to the conclusion that when the workman approached the corporation for correction of his date of birth in his service record, the corporation ought to have examined the genuineness of the documents produced by the workman alongwith such an application for correction of his date of birth. The labour court observed that it may happen that the time limit prescribed by the corporation for correction of the date of birth in the service record would apply to all the employees but it is also necessary to be considered that if the workman who is unaware about his real date of birth come to know about his real date of birth after the completion of the prescribed limit for correction, he may got information from the family and then he might have inquired about his correct date of birth and after collecting necessary documents in that regard, he may approach and in such circumstances, it is the duty of the corporation to consider and examine the genuineness of such documents and if such documents are not found to be genuine and correct by the corporation, then, the corporation has right to reject such request for correction of date of birth but in this case, the corporation has rejected his request without undertaking such an exercise and only on the ground that it was made belatedly, after the completion of the prescribed limit. The labour court observed that if the corporation would have examined the merits of the documents, whether they are genuine or not; whether they are correct or not, then, the corporation would have perhaps found that such documents were genuine but that exercise has not at all been carried out by the corporation and that is how the labour court felt that this is not proper and the corporation has to consider the documents which were produced by the workman and after examining all such documents, if it is found to be genuine, then, the corporation has to consider the same irrespective of the

limitation prescribed by the administrative circular which has been annexed to this petition as well as produced before the labour court by the corporation are the administrative instructions having no statutory force. Thus, the labour court was of the view that the genuineness or otherwise was not examined by the corporation and the application of the workman was rejected only on the ground of limitation prescribed as per the administrative instructions which is having no statutory force. The labour court was of the view that if the documents produced alongwith such request after completion of the limitation period are found to be genuine, then, the corporation has to consider the same without considering the delay. The labour court has also come to the conclusion that the real date of birth 16th January, 1931 was proved by the workman before the labour court on the basis of oral evidence of two witnesses for the workman as stated above which supported the say of the workman and the corporation has not been able to establish that such documents are not genuine and that the evidence of the said two witnesses is bogus. Therefore, considering two aspects, one that the genuineness of such request and the documents was not considered by the corporation at the time when the petitioner was approached by the workman and before the labour court, the corporation has not been able to controvert the oral and documentary evidence of the workman by producing any cogent and convincing evidence and, therefore, the labour court made the award in question. The labour court was of the view that the petitioner retired the workman wrongly on the basis of the date of birth. However, considering the fact that the workman has already reached the age of retirement even if the date of birth according to the workman is considered namely 16.1.1931 is considered, then also, by now he would have reached the age of retirement and considering all these aspects, the labour court awarded 50 per cent back wages for the intervening period. While considering the aspect of back wages, the labour court considered that the gainful employment of the workman has not been established but since the workman approached the corporation belatedly for correction of his date of birth, the labour court denied back wages to the extent of 50 per cent and awarded only 50 per cent back wages. Therefore, considering the award as a whole, according to my opinion, the award made by the labour court is based on the appreciation of the evidence on record and is a balanced award. According to my opinion, while considering the fact that once the document has been produced in respect of the correct date of birth by the workmen, then it was the duty of the corporation to

examine genuineness of such document irrespective of the limitation aspect but the corporation rejected the request only on the ground of limitation which has resulted into such proceedings. I am therefore of the view that the labour court has made just and reasonable award which would not require any interference of this court.

I have considered the decision cited by Ms. Bhatt on behalf of the petitioner in the matter of UNION OF INDIA AND HARNAM SINGH reported in 1994-I-LLJ 318. From the facts of the said decision, it appears that the request for alteration of the birth date was made after inordinate delay of 35 years which is not so in the case before hand. In this case, while the workman was in service, he made a request for change of birth and the delay also cannot be considered to be inordinate or unreasonable. Further, while granting relief, while considering the aspect of back wages, the labour court has considered the question such delay on the part of the workman in approaching the corporation and in view of such delay on the part of the workman, the labour court awarded only 50 per cent of the back wages. Therefore, in the facts and circumstances of the present case, said decision is not helpful to the petitioner. Except the said decision, no other decisions were cited by Ms. Bhatt before this Court. The labour court has considered the matter from altogether different angle. The labour court after considering the evidence on record, found that the real date of birth of the workman was 16.1.1931 and not 18.1.1930. The labour court also found that once request has been made by the workman before the corporation on the basis of some documents, then, the corporation has to consider and examine genuineness of such documents which the corporation has not done. Therefore, according to my opinion, the award of the labour court is based on legal appreciation of the evidence on record.

Learned advocate Ms. Bhatt has not been able to point out any infirmity and/or jurisdictional error or procedural irregularity committed by the labour court. She has also not been able to point out that the findings given by the labour court are contrary to the evidence on record or that the same are perverse. Therefore, once when the award of the labour court is based on the evidence on record while exercising the powers under section 10 of the ID Act, 1947 and once when there is no error apparently on the fact of the record, this court would not like to interfere with such findings of fact in exercise of the powers under Article 227 of the

Constitution of India.

As regards the submission made by Ms. Bhatt that if it was the view of the labour court that the corporation ought to have examined the genuineness of the documents produced by the workman, the Corporation may be given an opportunity of examining such genuineness of the documents by directing the workman to make appropriate representation in that regard before the Corporation. I have considered such submission made by Ms. Bhatt. I am of the view that now such an attempt is nothing but to frustrate the award made by the labour court in favour of the workman after the period of about 11 years or so. Once when the award has been made by the labour court after considering the evidence on record, once when this court has not found any procedural irregularity or jurisdictional error on the part of the labour court, once when this court has not found that the findings of the labour court are contrary to the evidence on record or perverse, this court cannot disturb the award by directing the workman to make representation before the corporation for the same relief which has been granted by the labour court by making award in his favour. It is more so when the corporation has not been able to establish either before the labour court or before this court that the documents produced by the petitioner were fake or bogus documents and not correct in respect of his date of birth. Such submission cannot be accepted now and, therefore, same is rejected.

Therefore, according to my opinion, considering the scope of interference in a petition under Article 227 of the Constitution of India as per the decisions in the matter of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319; ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100; ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service page 13, according to my opinion, since the petitioner has not been able to point out that the findings recorded by the labour court are perverse or that the labour court has committed any jurisdictional error and/or procedural irregularity, I am of the opinion that the petition filed by the petitioner is required to be dismissed as having no substance.

In the result, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated forthwith. There shall be no order as to costs.

This order has been passed by this court considering the peculiar facts and circumstances of the present case and also considering the award made by the

labour court and, therefore, it is directed that that
this shall not be cited as a precedent.

Dt.28.11.2003. (H.K. Rathod,J.)